



**4910-EX-P**

**DEPARTMENT OF TRANSPORTATION**

**Federal Motor Carrier Safety Administration**

**[Docket No. FMCSA-2018-0403]**

**Qualification of Drivers; Exemption Applications; Implantable Cardioverter  
Defibrillators**

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of applications for exemption; request for comments.

**SUMMARY:** FMCSA announces receipt of applications from seven individuals for an exemption from the prohibition in the Federal Motor Carrier Safety Regulations (FMCSRs) against operation of a commercial motor vehicle (CMV) by persons with a current clinical diagnosis of myocardial infarction, angina pectoris, coronary insufficiency, thrombosis, or any other cardiovascular disease of a variety known to be accompanied by syncope, dyspnea, collapse, or congestive heart failure. If granted, the exemptions would enable these individuals with implantable cardioverter defibrillators (ICDs) to operate CMVs in interstate commerce.

**DATES:** Comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** You may submit comments identified by the Federal Docket Management System (FDMS) Docket ID FMCSA-2018-0403 using any of the following methods:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- Mail: Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.
- Hand Delivery: West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal Holidays.
- Fax: 1-202-493-2251.

To avoid duplication, please use only one of these four methods. See the “Public Participation” portion of the SUPPLEMENTARY INFORMATION section for instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366-4001, fmcsamedical@dot.gov, FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE, Room W64-224, Washington, DC 20590-0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366-9826.

## **SUPPLEMENTARY INFORMATION:**

### **I. Public Participation**

#### **A. Submitting Comments**

If you submit a comment, please include the docket number for this notice (Docket No. FMCSA-2018-0403), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use

only one of these means. FMCSA recommends that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, put the docket number, FMCSA-2018-0403, in the keyword box, and click “Search.” When the new screen appears, click on the “Comment Now!” button and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period.

## **B. Viewing Documents and Comments**

To view comments, as well as any documents mentioned in this notice as being available in the docket, go to <http://www.regulations.gov>. Insert the docket number, FMCSA-2018-0319, in the keyword box, and click “Search.” Next, click the “Open Docket Folder” button and choose the document to review. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue, SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

### **C. Privacy Act**

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to [www.regulations.gov](http://www.regulations.gov), as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at [www.dot.gov/privacy](http://www.dot.gov/privacy).

## **II. Background**

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the FMCSRs for a five-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statute also allows the Agency to renew exemptions at the end of the five-year period. FMCSA grants exemptions from the FMCSRs for a two-year period to align with the maximum duration of a driver's medical certification.

The seven individuals listed in this notice have requested an exemption from 49 CFR 391.41(b)(4). Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by statute.

The physical qualification standard found in 49 CFR 391.41(b)(4) states that a person is physically qualified to drive a CMV if that person has no current clinical diagnosis of myocardial infarction, angina pectoris, coronary insufficiency, thrombosis, or any other cardiovascular disease of a variety known to be accompanied by syncope, dyspnea, collapse, or congestive cardiac failure.

In addition to the regulations, FMCSA has published advisory criteria<sup>1</sup> to assist Medical Examiners in determining whether drivers with certain medical conditions are qualified to operate a CMV in interstate commerce. [49 CFR part 391, APPENDIX A TO PART 391—MEDICAL ADVISORY CRITERIA, section *D. Cardiovascular: § 391.41(b)(4)*, paragraph 4.] The advisory criteria states that ICDs are disqualifying due to risk of syncope.

### **III. Qualifications of Applicants**

#### **Mark Caviola**

Mr. Caviola is commercial motor vehicle driver who resides in New York and operates in Connecticut. A June 2018, Physician's Statement from his cardiologist to the New York State Department of Motor Vehicles states that his ICD was implanted in 2005 and during his ICD treatment has had no therapies, history of syncope, or loss of consciousness, with symptoms only limited to palpitations.

#### **John J. Groff**

Mr. Groff is a Class A CDL holder in Pennsylvania. A November 2018, report from his cardiologist states that his CRT-D device was implanted in August of 2018, and following placement he showed likely improvement of his ejection fraction to the 40-45 percent range. His cardiologist reports that he has never had required device therapies.

#### **Kevin L. Krueger**

Mr. Krueger is a commercial motor vehicle driver in Nebraska. August and December 2018 medical documentation from his cardiologist reports that a dual chamber ICD was

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<sup>1</sup> See [http://www.ecfr.gov/cgi-bin/text-idx?SID=e47b48a9ea42dd67d999246e23d97970&mc=true&node=pt49.5.391&rgn=div5#ap49.5.391\\_171.a](http://www.ecfr.gov/cgi-bin/text-idx?SID=e47b48a9ea42dd67d999246e23d97970&mc=true&node=pt49.5.391&rgn=div5#ap49.5.391_171.a) and <https://www.gpo.gov/fdsys/pkg/CFR-2015-title49-vol5/pdf/CFR-2015-title49-vol5-part391-appA.pdf>.

implanted in 2009 and changed to a biventricular ICD in January of 2018. His report indicated ongoing monitoring of his device and that he is tolerating medical therapy.

Michael R. Miller

Mr. Miller is a Class A CDL holder in California. A January 2019 letter from his cardiologist reports that his ICD was implanted in September of 2018, and that he has not received any type of defibrillation since implantation, has not had cardiovascular complaints and is compliant with his current medical regime.

Anthony Saitta

Mr. Saitta is a commercial motor vehicle driver in New York. An undated letter from his cardiologist reports that his ICD was implanted in 2007 and that since implantation the device deployed once in 2016 inappropriately for atrial tachycardia with rapid ventricular rate. The letter states that Mr. Saitta reported no symptoms other than feeling the shock from the device, and that he did not lose consciousness. Prior to and since that event, the device has not deployed and he has maintained a stable cardiac status.

William Allan Spivey

Mr. Spivey is a Class A CDL holder in North Carolina. A January 2019, letter from his cardiologist reports that his ICD was implanted in March of 2018. His cardiologist reports that he has never received shocks from his device, at times has symptoms of shortness of breath and occasional fatigue after extended walking, and his current cardiac condition is stable.

Aaron J. Thomas

Mr. Thomas is a commercial motor vehicle driver in Georgia. A December 2018, letter from his cardiologist reports that Mr. Thomas was implanted with an ICD in November

of 2018, and is recovering well. He requires follow-up every six months for proper monitoring of his ICD and denies shortness of breath or chest pain.

### **Request for Comments**

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated in the dates section of the notice.

Issued on: February 14, 2019.

**Larry W. Minor,**  
*Associate Administrator for Policy.*

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